IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

WA.No. 2075 of 2006()

AGAINST THE JUDGEMENT/ORDER IN WPC.34586/2005 Dated 20/09/2006

.....

APPELLANT: PETITIONER.

M.PUSHKARAN, KOLLAQBHAGATHU VEEDU,
MALAYAM P.O. THIRUVANANTHAPURAM.

BY ADV. SRI.V.S.BABU GIREESAN

RESPONDENTS: RESPONDENTS.
---

1. THE DIRECTOR,
SREE CHITRA THIRUNAL INSTITUTE FOR MEDICAL SCIENCE AND TECHNOLOGY, THIRUVANANTHAPURAM.

2. THE ADMINISTRATIVE OFFICER,
SREE CHITHRA THIRUNAL INSTITUTE FOR MEDICAL SCIENCE AND TECHNOLOGY, THIRUVANANTHAPURAM.

BY ADV. SRI.T.R.RAVI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 04/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.A. ABDUL GAFOOR & K.R. UDAYABHANU, JJ

W.A. NO. 2075 OF 2006

Dated this the 4th day of December, 2006

JUDGMENT

Abdul Gafoor, J

The recruiting process started as per Ext.P4 and P5 for appointment to 3 permanent posts of security guards in the Sree Chitra Institute for Medical Sciences where 1st respondent is the Director. The list prepared contained names of 5 candidates. The writ petitioner-appellant was number 4 therein. The list was finalised on 11.04.2005. It had validity for a period of one year until 10.04.2006. Rank numbers 1 and 2 were appointed on 13.04.2005 and 05.05.2005 respectively and the 3rd person was offered appointment on 13.06.2005. But he declined to accept appointment. The 4th person, the appellant-writ petitioner was not offered appointment. These are the admitted facts. It was in the above circumstances, he approached this court seeking a direction to appoint him. The claim was resisted mainly relying on Ext.R1(a) and R1(b). The ultimate of these two documents is

that the Governing body had decided to abolish the permanent posts of drivers and security guards and to adopt contract system of appointment. Therefore, the appellant-writ petitioner was not offered appointment as there was no post at all, it was submitted. The learned single Judge took note of this contention. The decision of the Governing body of the Institute is contained in Ext.R1(b) and it is found that the decision to abolish the posts cannot be attacked by any person. He is figuring only as rank No.4 in the list prepared before such decision and he did not have any crystalise decision to get appointment. This is a matter relating to the management of the institution and it cannot be vetoed by the court, the learned single Judge found. Moreover, it was also found that the writ petitioner/appellant had not challenged the decision in Ext.R1(b).

2. A close reading of Ext. R1(b) will reveal that governing body had noticed that there were two permanent vacancies of security guards and 2 permanent posts of drivers, lying vacant. This decision was taken on 29.12.2005, during the currency of the list in question wherein the appellant-writ petitioner figured

No. 4. Ext. R1(b) further reveals that the resolution of the Governing body was for abolishing vacant posts and that services may be contracted out/hired ratifying the decision of the Director not to fill the two vacant posts of security guards and drivers on permanent basis. If the vacancy was abolished necessarily there was no question of appointment either on substantial or on temporary basis. There is a decision to fill it up on temporary basis. Thus contract appointment reveals the existence of the vacancy. The 3rd among the vacancies notified was one really intended to be filled up even on 13.06.2005 when the 3rd rank holder in the list had been offered appointment. The decision contained in Ext.R1(b) is the decision taken by the Governing Body. The petitioner/appellant need not challenge the decision taken by the Governing Body, when there is no decision in Ext.R1(b) to abolish the post but only to fill up the permanent posts on contract basis. Then the next person included in the list for regular appointment has to be considered. If the 1st respondent did not have any intention to fill up the vacant posts either temporarily or permanently, the appellant-petitioner could not have staked his claim. As he is the next person admittedly to

be appointed, so long as the Governing Body intends to fill up the posts temporarily during the currency of the list, the claim of the appellant cannot be overlooked.

Therefore, we are of the view that the decision taken by the learned Single Judge is not justified and the appeal has to be allowed directing appointment of the petitioner/appellant. We accordingly allow this Writ Appeal.

K.A. ABDUL GAFOOR, JUDGE

K.R. UDAYABHANU, JUDGE.

RV